
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-02-PA-319
Urban Radio of Pennsylvania, L.L.C.)	
Radio Station WURP)	NAL/Acct. No. 200332400006
Philadelphia, Pennsylvania)	
)	FRN: 0004-9241-06
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 6, 2003

By the District Director, Philadelphia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Urban Radio of Pennsylvania, L.L.C. ("Urban") has apparently violated Sections 17.47(a)(1), 17.48(a) and 17.51(a) of the Commission's Rules (the "Rules")¹. These violations occurred because Urban failed to exhibit all red obstruction lighting on its antenna structure, failed to make observations of the obstruction lighting once every 24 hours and failed to notify the Federal Aviation Administration ("FAA") of an obstruction light outage. We conclude that Urban is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. Urban, licensee of AM broadcast station WURP, owns the antenna structure which is located at the coordinates 40° 24' 47" N by 079° 51' 13" W and assigned the Antenna Structure Registration Number 1225839. Based on FAA Aeronautical Study Number 89-AEA-1635-OE, Urban is required to display red obstruction lighting on the antenna structure between sunset and sunrise.

3. On September 25, 2002, the Enforcement Bureau's Philadelphia Office received a fax from an anonymous person stating that the obstruction lighting on the antenna structure for AM broadcast station WURP was not functioning. On October 2, 2002, an agent from the Philadelphia Office traveled to the Braddock, Pennsylvania area to investigate the complaint. On October 2, 2002 between 9:40 p.m. and 10:00 p.m., on October 3, 2002 between 6:10 a.m. and 6:43 a.m. and on October 3, 2002 between 7:20 p.m. and 7:45 p.m., the agent observed that the red obstruction lighting on the WURP antenna structure was extinguished.

4. On October 3, 2002, the agent contacted Mr. John Heal, the chief engineer for station WURP, to inform Urban of the obstruction light outage. During the telephone conversation, Mr. Heal stated that Urban was not aware that the obstruction light outage had occurred and, therefore, did not

¹ 47 C.F.R §§ 17.47(a)(1), 17.48(a), and 17.51(a).

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notify the FAA of the outage. He said that although Urban had an agreement with a person who lived near the antenna structure to monitor the obstruction lighting, that person did not monitor the obstruction lighting as required.

5. On October 10, 2002, the Philadelphia Office issued a Notice of Violation ("NOV") to ICBC Broadcasting Holdings, Inc., the parent company of Urban. The NOV cited Urban for failure to exhibit red obstruction lighting, in violation of Section 17.51(a), failure to make observations of the obstruction lighting once every 24 hours, in violation of Section 17.47(a)(1) of the Rules, and failure to notify the FAA of the obstruction lighting outage, in violation of Section 17.48(a) of the Rules.

6. In a letter dated October 28, 2002, Mr. David O'Connor of Holland & Knight LLP submitted a response to the Notice of Violation on behalf of Urban. In the response, Mr. O'Connor acknowledged the violations and provided a detailed description of the actions that Urban took to correct the violations. He stated that John Heal, the chief engineer of WURP, immediately contacted the FAA to report the outage after learning of the outage on October 3, 2002. He also stated that Dan Plants, the WURP tower contractor, completed the repairs to the obstruction lighting on October 7, 2002 at approximately 6:00 p.m., and that the obstruction lighting had been functioning properly since the repairs were made. He further stated that the station retained a local consulting engineer to visually observe the tower structure to ensure compliance with the lighting specifications, and that in order to preclude a recurrence of unreported tower lighting outages, the station ordered a Broadcast Tools AVR8 Alarm Voice Response Unit that would be installed at the site. This unit would constantly monitor the obstruction lighting and place emergency calls automatically to several WURP personnel if an outage occurs.

III. DISCUSSION

7. Section 17.47(a)(1) of the Rules requires that the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part shall make observations of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure that all lights are functioning properly as required. Urban failed to make observations of the obstruction lighting on October 2, 2002 and October 3, 2002. Consequently, Urban was unaware that the obstruction lighting on the WURP antenna structure was extinguished.

8. Section 17.48(a) of the Rules requires that the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part shall report immediately by telephone or telegraph to the nearest Flight Services Station or office of the Federal Aviation Administration any observed or otherwise known extinguishment or improper functioning of any top steady burning light or flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes. Urban failed to notify the FAA of the obstruction light outage that occurred on the WURP antenna structure on October 2, 2002 and October 3, 2002.

9. Section 17.51(a) of the Rules requires that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified. On October 2, 2002 between 9:40 p.m. and 10:00 p.m., on October 3, 2002 between 6:10 a.m. and 6:43 a.m., and on October 3, 2002 between 7:20 p.m. and 7:45 p.m., Urban Radio of Pennsylvania, LLC., failed to exhibit the red obstruction lighting on the WURP antenna structure.

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10. Based on the evidence before us, we find that Urban willfully² and repeatedly³ violated Sections 17.47(a)(1), 17.48(a), and 17.51(a) of the Rules. The *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*"),⁴ sets the base forfeiture amount for failure to make required measurements or conduct required monitoring at \$2,000, for failure to file required forms or information at \$3,000, and for failure to comply with prescribed lighting and/or marking at \$10,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934,⁵ (the "Act"), as amended, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a fifteen thousand dollar (\$15,000) is warranted.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶, and Sections 0.111, 0.311 and 1.80 of the Rules⁷, Urban Radio of Pennsylvania L.L.C. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollar (\$15,000) for failing to make observations of the obstruction lighting on the WURP antenna structure on October 2, 2002 and October 3, 2002, in violation of Section 17.47(a)(1) of the Rules, failing to notify the FAA of the obstruction light outage on October 2, 2002 and October 3, 2002, in violation of Section 17.48(a) of the Rules, and failing to exhibit all red obstruction lighting on the WURP antenna structure on October 2, 2002 and October 3, 2002, in violation of Section 17.51(a) of the Rules,.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Urban Radio of Pennsylvania L.L.C. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch,

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, and 0.311.

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Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) 0004-92-4106, and should note the NAL/Acct. No. 200332400006.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332400006 and FRN: 0004-92-4106.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Urban Radio of Pennsylvania, L.L.C., at 2471 North 54th Street, Suite 220, Philadelphia, Pennsylvania 19131.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes
District Director
Philadelphia Office

⁸ See 47 C.F.R. § 1.1914.